

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID C. JONES,

Plaintiff,

v.

9:19-CV-0047
(TJM/CFH)

A. RAVEN, et al.,

Defendants.

APPEARANCES:

DAVID C. JONES
Plaintiff, Pro Se
16-A-2206
Five Points Correctional Facility
Caller Box 119
Romulus, NY 14541

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

Plaintiff David C. Jones commenced this action by filing a pro se complaint for relief pursuant to 42 U.S.C. § 1983, together with an application to proceed in forma pauperis ("IFP"). Dkt. No. 1 ("Compl."); Dkt. No. 2 ("IFP Application"). By Decision and Order filed on February 7, 2019, plaintiff's IFP Application was granted, and after screening the complaint in accordance with 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b), some of plaintiff's claims and some of the named defendants were dismissed and the Court directed service and a response for the claims against defendant Raven that survived sua sponte review.

Dkt. No. 7 (the "February 2019 Order"). Presently before the Court is a letter from plaintiff in which he states as follows: "I writing to [sic] concerning a 1983 that I filed #9:19-cv-00047 (TJM/CFH). I would like to cancel proceedings because my family obtain[ed] a lawyer to handle this the right way." Dkt. No. 9.¹

The Court construes plaintiff's letter as an application seeking voluntary dismissal of this action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. Rule 41(a) provides in relevant part that a "plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). Since defendant Raven has not answered or moved for summary judgment, plaintiff is entitled to voluntary dismissal of this action without prejudice, without further order of the court, upon the filing of such a notice.

In light of the foregoing, upon the filing of plaintiff's notice requesting to cancel this action, this action was dismissed, without prejudice, and an order of the court was not required in order to implement that dismissal.

WHEREFORE, it is hereby

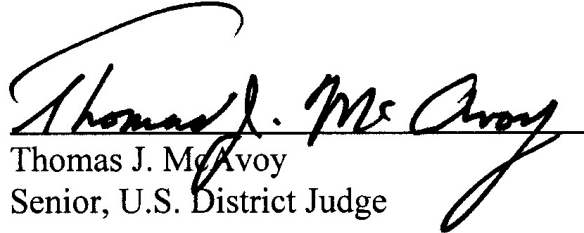
ORDERED that in accordance with plaintiff's notice (Dkt. No. 9) to voluntarily dismiss this action, the Clerk of the Court shall close this case and reflect that the action is voluntarily dismissed without prejudice pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure; and it is further

ORDERED that the Clerk serve copies of this Decision and Order on the plaintiff and the Office of the New York State Attorney General.

¹ Plaintiff also identifies the name of the attorney purportedly retained on his behalf. See Dkt. No. 9.

IT IS SO ORDERED.

Dated: February 21, 2019



Thomas J. McAvoy
Senior, U.S. District Judge